Clearly, Congress intended that both existing State requirements and additional State requirements are appropriate so long as they were "not inconsistent" with the provisions of the Act.

The discretion granted to the States under § 251(3)(C) is even greater. There, Congress indicated that some inconsistency would be acceptable, allowing any regulation, order or policy of a State commission that "does not substantially prevent implementation of the requirements of this Section and the purposes of this part." (Emphasis added). Clearly, such discretion granted by Congress indicates that the States should play a substantial role in the implementation of the Act.

Congress also clearly intended that States have the authority to impose obligations not only on incumbent LECs and LECs but on all "telecommunications carriers for intrastate services". Here, Congress reflected its intent that the States be allowed to impose obligations on carriers other than LECs and incumbent LECs as part of the development of competition in "telephone exchange service or exchange access."[25] Undoubtedly, Congress foresaw the integration of local, long distance and other telecommunications services and recognized its significance to the development of local telephone competition. Clearly, Congress also intended for the states to be significant participants in the implementation of competition.

[25] Section 261(c).

C. Imposing additional requirements on new LECs may be essential to fair competition between large new LECs and small incumbent rural LECs.

As Congress recognized, it is appropriate for States and State commissions to impose additional obligations on new LECs and even "telecommunications carriers." [26] The need for such additional obligations is particularly clear in the context of potential competition between large new LECs such as AT&T, MCI, TCI and others, and small incumbent rural LECs. Here, the issues of market and economic power are far different from competition in urban areas. While the assumption is that TIER 1 LECs have more economic and market power than a potential new entrant, the same cannot be said of a potential entrant such as AT&T with the its name recognition and economic and technical assets.

1. The States must be allowed to impose additional requirements on new large LECs as a precondition to termination of interconnection exemptions with small LECs.

The arguments in favor of allowing States to impose additional requirements on new large competitors are all the more clear if the states may consider the termination of interconnection exemptions for LECs under Section 251(f)(2). Specifically, it may be essential to the development of fair competition that rural LECs remain exempt from the interconnection obligations of incumbent LECs unless and until certain preconditions are imposed upon new competitors, particularly if the competitors are vastly larger entities with substantially greater technological and economic resources. In this context, it would be completely appropriate for a State or State commission to precondition any termination of interconnection exemptions on the fulfillment of substantial obligations by new competitors.

2. The States must also be allowed to impose additional requirements as part of the "suspension and modification" process.

The need for additional requirements as a precondition of terminating an interconnection exemption is similar to the need for additional requirements to be considered as part of any "suspension or modification" process under Section 251(f)(2). The suspension and modification of both LEC and incumbent LEC obligations may involve both rural LECs and other LECs that serve less than two (2%) percent of the nations access lines.[27] The suspension and modification process allows States and State commissions to establish compromise solutions, where the exemption is neither completely upheld nor completely waived. As the Conference Committee Report states in part:

> New section 251(f)(2) allows a local exchange carrier with less than 2% of the subscribed access lines nationwide to petition for a suspension or modification of the requirements under new sections 251(b) and 251(c) for the telephone exchange service facilities specified in the petition. The State commission shall grant the petition to the extent that it is necessary to avoid significant adverse impacts on consumers, imposing an undue economic burden or a technically infeasible requirement on the incumbent, and provided that the modification or suspension is in the public interest.[28]

To achieve an appropriate balance in such a situation, it is essential that the States and State commissions have the discretion to <u>achieve the balance by increasing the</u>

[27] section 251(F)(2).
[28] Conference Committee report at § 251, p. 122.

requirements of the new competitors as well as by increasing the requirements of the incumbent LECs.

D. Universal service may be directly affected by the obligations imposed on the new competitors.

In addition to the other powerful policy arguments in favor of allowing States and State commissions to impose additional obligations on new competitors, the potential impact of new competitors on universal service also compels the same result. Clearly, the introduction of new competitors may have an impact on universal service, particularly in the context of rural areas. As the Act provides, State commissions are required to make specific findings before certifying additional recipients of federal universal service funding.[29] Such findings turn on specific determinations of the impact of additional recipients on universal service and the public interest in general.[30] In making such determinations, the States and the State commissions should be allowed to impose additional obligations on the new competitors so that their presence does not adversely affect universal service considerations.

IV. SECTION 251(C) OF THE ACT IS NOT INTENDED TO REGULATE THE TERMS OF NON-COMPETING LEC INTERCONNECTIONS.

The Commission asks whether Section 251(c), which applies to interconnection agreements between incumbent LECs and competing LECs, also applies to the interconnections between neighboring, non-competing LECs.[31] It has been asserted by ALTS that such interconnections are subject to that provision and; therefore, also subject

[29] Section 214(e)(2).
[30] Id. which reads in part: "Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."
[31] NPRM at ¶ 170.

to the provisions of Section 252 (a), requiring the review of those agreements by the State Commissions and the public disclosure of those interconnection agreements.[32] Contrary to ALTS' assertions, the application of Sections 251(c) and 252(a) to non-competing LEC interconnection arrangements would violate the clear intent of the Act, would lead to an unreasonable burden on both State commissions and consumers, and would be internally inconsistent with other provisions of the Act.

A. Non-competing interconnections are very common.

Non-competing interconnections between LECs and between LECs and interchange carriers have always existed, and Section 251(a), reaffirms these existing interconnection duties, stating in relevant part:

> Each telecommunications carrier has the duty--
> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . ..

These non-competing interconnection obligations apply to every telecommunication carrier In contrast, Section 251(c), applies only to incumbent LECs obligations to competing local service providers. This difference in the scope and focus indicates that Section 251 c) was not intended to regulate interconnections between LECs that were <u>not</u> established to facilitate competition.

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[32] NPRM footnote 63.

B. Rural LECs are exempt from any filing requirements.

In addition, "rural telephone companies" are exempt under Section 251(f)(1)(A) from the provisions of Section 251(c) unless a State commission expressly eliminates that exemption pursuant to the procedures of Section 251(f)(1). That Section reads in part:

> Subsection (C) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 ... "

Consequently, an interpretation that non-competing LEC interconnection agreements are subject to Section 251(c) would lead to the following anomalies: 1) "incumbent LEC" to "incumbent LEC" interconnections would be included under this provision; 2) "rural telephone company" to "rural telephone company" interconnections would be excluded; and "rural LEC " to "incumbent LEC" interconnections would be excluded.

C. Existing interconnection arrangements would not provide appropriate patterns for competitive interconnections.

Those parties arguing that existing non-competing LEC interconnections are subject to the provisions Section 251(c) also seek to require the disclosure of those arrangements pursuant to Section 252 (a) and to use these existing interconnection agreements as a template for competitive interconnection arrangements. Such a requirement is contrary to both the Act and sound public policy.

Section 252(a)(1) provides:

> (a) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION.--
>
> (1) VOLUNTARY NEGOTIATIONS.--Upon receiving a request for interconnection, services, or network elements pursuant to section 251, <u>an incumbent local exchange carrier may negotiate and enter into a</u>

> binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

Based on the plain language of the above provision, the duty to submit to a State commission "any interconnection agreement negotiated before the date of enactment" is limited to occasions where 1) parties have negotiated a voluntary interconnection agreement under the Act; and 2) the same parties have entered into prior interconnection agreements. Interconnection agreements between non-competing LECs do not fit this definition.

Further, the interpretation of this section to require the filing of all interconnection agreements between non-competing LECs is contrary to the clear purpose of this section which is to make public all voluntary interconnection arrangements between two competing parties. Its purpose is not to require a global review of the hundreds of unrelated interconnection arrangements between an incumbent LEC and other non-competing LECs which were entered into without any expectation of competition between the parties.

Further, such an interpretation would rest on the assumption that Congress would impose a sweeping burden on both State commissions and parties not facing any requests for interconnection as an afterthought in a section addressed to the very separate subject of negotiations between competing service providers. If Congress had intended a review of all existing non-competing LEC interconnection arrangements, it would not have imposed that sweeping requirement as a part of a subsection directed to the completely separate subject of interconnection between competitors. Rather, Congress would have required such disclosure of all interconnection agreements in an entirely separate section of the Act.

D. Imposing interconnection obligations on non-competing LECs would needlessly harm consumers.

Imposing the interconnection obligations of Section 251(c) on interconnection agreements between non-competing LECs would also be contrary to public policy. The existing interconnection arrangements were developed without consideration to the requirements of the Act, particularly with respect to the obligation of reciprocal compensation. This is particularly true for many extended area service ("EAS") arrangements. These LECs would be unlikely to voluntarily agree to such arrangements for new interconnections. See the comments below on the limited situations where bill and keep would be consistent with the requirements of the Act.)

If these existing interconnection agreements were subject to Section 251(c) and 251(a)(1), of many existing LEC to LEC arrangements would be eliminated, including arrangements in situations where there is very little likelihood of any competitor being affected, but a very high likelihood of injury to customers from higher rates resulting from the elimination of these arrangements. Eliminating those arrangements could have a dramatic and unnecessary negative consequence, requiring large local rate increases for customers of LECs which terminate less traffic than the neighboring EAS exchanges and large revenue windfalls for LECs which terminate more traffic than the neighboring EAS exchange. The obligation to review all existing interconnections between non-competing

LECs and to develop fair replacement compensation arrangements would also result in a massive increase in the regulatory burdens, as State commissions were required to determine the appropriateness of a multitude of existing agreements.

In addition, interconnection agreements between non-competing LECs should not be used as a standard for establishing interconnection arrangements between an incumbent LEC and a competing telecommunications carrier. The purpose of the nondiscrimination provisions of the Act are to allow all competing telecommunications carriers to have the same interconnection rights with a particular incumbent LEC. A competing telecommunications carrier is not competitively disadvantaged if the neighboring, non-competing LEC has different interconnection arrangements. Therefore, conforming non-competing arrangements to match those for competing telecommunications carriers is not required to fulfill the intent of the Act.

E. The Act recognizes the differences between competing and non-competing interconnections.

Finally, the Act recognizes that some non-competitive LEC to LEC arrangements are outside the common carrier obligations which apply to other facilities. Section 259 allows an eligible telecommunications carrier lacking economies of scale to share an incumbent LEC's "public switched network infrastructure, technology, information and telecommunications facilities and functions" in order to provide service to customers in a different service area. Section 259(b)(3) prohibits common carrier treatment for such sharing arrangements.

Those arrangements may enable customers in small and rural telephone company service areas to obtain otherwise unavailable services and network improvements under arrangements between their small serving LECs and larger adjacent LECs. Such sharing arrangements should not become the basis for determining the rights of competing telecommunications carriers. Section 259(b)(6) specifically provides that such sharing obligations do not apply to services that may be offered in the LEC's telephone exchange area. Clearly, the Act recognizes and acknowledges that non-competitive arrangements must be subject to different criteria and remain appropriate for many situations.

In conclusion, the Act retains the existing obligations of non-competing LECs to interconnect. The obligations set forth in Section 251(c) and 252(a)(1) should be applied in the manner Congress intended--to regulate negotiations between an incumbent LEC and a competing telecommunications carrier. Those obligations should not be extended to non-competing interconnection arrangements.

V. Unbundled Elements Should Be Priced To Recover Their Cost.

The Commission seeks comments on the relationship between rates for unbundled network elements and rates for bundled service offerings.[33] In responding to this inquiry, it is particularly important to remember the Commission's observations that:

> This rulemaking is one of a number of interrelated proceedings designed to advance competition, to reduce regulation in telecommunications markets and at the same time to advance and preserve universal service to all Americans. We are especially cognizant of the interrelationship between this proceeding, our recently initiated proceeding to implement the comprehensive universal service provisions of the 1996 Act and our upcoming proceeding to reform our Part 69 access charge rules. We ask commenters in this proceeding to keep in mind the relationship between these parallel proceedings and to frame their proposals within the pro-competitive deregulatory context of the 1996 Act as a whole.[34]

[33] NPRM at ¶¶ 184 - 188.
[34] NPRM at ¶ 3.

Regardless of one's view of the appropriate long-term goals under the Act, the reality is that it must be applied within the existing framework of local and access rates, both interstate and intrastate, and applied in a manner that provides fair results if local or access rates change.

As described below such a result can best be accomplished by applying the following principles: a) all unbundled elements should be priced to recover their cost, even if the sum of the costs for the unbundled elements exceeds the rate for the bundled service; b) competing local exchange carriers that buy unbundled network loop and switching components would receive the access revenues from interexchange carriers for providing "exchange access"; c) competing carriers that purchase local service for resale must continue to purchase switched access service as a separate service; and d) retail services priced to serve a particular customer class should only be resold to customers within the same customer class.

Under these principles, customers of the incumbent LEC would not be harmed by an unexpected mis-application or arbitrage of the current local rate structures which were based on public policy decisions that deliberately recovered a portion of the local loop costs from long distance services. Moreover, as is discussed below, it will not be necessary to eliminate those local rate structures, with the devastating harm that would have on universal service

A. Unbundled costs and rates may appropriately exceed bundled rates.

If the unbundled loop rate and switched access rate were set at cost, the sum of those unbundled rates would necessarily be higher than the current bundled retail local access rate because the bundled rate does not include the costs currently recovered through the CCLC. Because the unbundled rate loop rate would need to recover the cost currently recovered through the CCLC, the sum of the unbundled rates would exceed the current bundled rate. However, the competing LEC would correspondingly be allowed to receive the access revenues from providing "exchange access" to interexchange carriers. Conversely, if a competing LEC purchases the bundled local access service, it should not be allowed to receive the revenues from the separate service for providing "exchange access."

B. The imputation rule would lead to inappropriate results.

The alternative "imputation rule" prohibits the aggregate cost of the unbundled elements from exceeding the bundled retail rate.[35] Under that alternative, unbundled network elements must necessarily be priced below cost. Such a practice is in direct conflict with Section 252(c), which provides in relevant part:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
> (A) shall be--
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable) and
> (ii) nondiscriminatory, and
> (B) may include a reasonable profit.

(Emphasis added).

[35] NPRM at ¶ 186.

In addition, the imputation rule, which results in uneconomic, below-cost pricing, would also result in the incumbent LEC failing to recover its lost revenues unless it increased other rates to recover the loss. As described below, forcing dramatic increases in local rates in order to implement the Act is contrary to the Act's universal service requirements of preserving rates in rural areas "that are reasonably comparable to rates charged for similar services in urban areas."[36]

The Commission notes that the New York Public Service Commission has rejected the imputation rule:

> Certain states, including the New York Public Service Commission, have not found it necessary to adopt an imputation rule. When the incumbent LEC sells retail services at prices that are less than cost,. it may be that it recovers the difference in other state retail service rates and in interexchange access charges. ...Under these circumstances, it could be argued that no imputation rule is needed to protect new entrants <u>because, as a matter of market economics or legal obligations, new entrants purchasing unbundled elements priced at cost would be providing all of these services, and thus could collect the same relatively overpriced revenues for toll service, interstate access, vertical features, and other offerings</u> to make up for the underpricing of basic residential local exchange service. .<u>By contrast, an entrant that merely resells a bundled retail service purchased at wholesale rates, would not receive the access revenues.</u> There are at least two possible additional objections to an imputation rule when it requires that unbundled elements be priced below cost. First, the unbundled elements could be used to provide services that compete with LEC retail services that are the source of the subsidy. Second, if unbundled elements were priced at less than cost, then efficient facility-based entry would be deterred, as new entrants purchase unbundled network elements at below cost rather than constructing their own facilities.[37]

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[36] Section 254(b)(3).
[37] NPRM at 186.

(Emphasis added, footnote omitted.) The New York Commission's policy rejecting the imputation rule and the comments contained in the above paragraph reflect the proper public policy.

C. Limitations on resale are appropriate.

The Commission also requesting comments on the authority given to State Commissions to limit resale to a particular customer class where the retail rates that have been designed for that particular class.[38] Section 251(c)(4)(B), provides in relevant part:

> [A] State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

In order to eliminate the below described problems which would result in the absence of such a limitation, State commissions should be encouraged to limit resale to the same customer class for which the services were originally intended, as the Act clearly authorizes. Such a policy is also reflected in some state statutes.[39]

It is undeniable that local residential rates are generally lower than comparable local business rates. These pricing differences reflect past public policies favoring higher business rates, based on value of service and universal service justifications, so that residential rates would remain affordable. If a competing LEC is allowed, for example, to purchase residential access service at wholesale and resell that access service to business customers, the incumbent LEC will be unable to compete for business access services. It will also lose the revenue support previously received from the business

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[38] NPRM at ¶ 176.

[39] Minnesota Statutes § 237.121(5)(I) and (ii).

access service. The only solution for the incumbent LEC would be to remove the business/residential rate differential.

D. All local rates need not exceed costs.

The Commission also asks whether a preemptive rule should be adopted requiring all local rates to exceed the cost of service.[40] This alternative is directly contrary to the universal service policy requirements of Section 254(b). The existing rate structures have provided the foundation for affordable, universal service in both urban and rural areas. To eliminate those support structures and increase all rates above costs could result in some residential local rural rates exceeding $100 per month.

Section 254(b) of the Act requires the Commission to base universal service policies on the following principles:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Universal service, and the duty to assure rural/urban rate comparability will be irreversibly harmed if policies were adopted that: a) eliminate the rate supports contained in current local rate designs; b) allow competing LECs to buy unbundled network components below cost while simultaneously retaining access charges; c) allow resale of services priced for one class of customers to another class of customers; or d) require all local rates to exceed the costs of the service.

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[40] NPRM at ¶ 188.

In conclusion, the Commission should adopt the following policies: a) all unbundled elements should be priced to recover their cost, even if the sum of the costs for the unbundled elements exceeds the bundled rate; b) competing local exchange carriers which buy unbundled network loop and switching components should receive the access revenues resulting from providing "exchange access" to interexchange carriers; c) competing carriers which purchase local service at wholesale for resale should not be allowed to receive the revenues from the separate access services; d) retail services priced to serve a particular class should only be resold to the same class of customers; and e) all local services should not be repriced to meet the full cost of those services. These policies are fair to the incumbent LEC, the competitive LEC, and, most importantly the customers. In addition, these policies will remain valid even if the current rate supports are changed or even eliminated.

VI. SECTION 251(C)(3) DOES NOT PERMIT AN INTEREXCHANGE CARRIER TO CIRCUMVENT SWITCHED ACCESS CHARGES.

The Commission asks whether the Act allows interexchange carriers to substitute the purchase of unbundled elements for the payment of access charges.[41] For many of the same reasons discussed in Section IV above, Section 251(c)(3) does not permit interexchange carriers to circumvent interstate and intrastate switched access charges. The underlying purpose of the Act is to allow telecommunications carriers an opportunity to compete with incumbent LECs <u>for local exchange service</u>. Interexchange service is not an incumbent LEC exchange service. The distinction between switched access and local access is recognized in several provisions of the Act.

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[41] NPRM at ¶ 160 et seq.

A. Interexchange access is distinguished under the Act.

As the Commission noted interstate interexchange service interconnection rights are determined pursuant to 47 U.S.C. Section 201.[42] Section 251(i), provides:

> Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.

Similarly, Section 251(g) provides that the Act is not intended to affect existing interstate or intrastate access charges, stating in relevant part:

> [E]ach local exchange carrier . . . shall provide exchange access, information access and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (<u>including receipt of compensation</u>) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 . . . until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.

(Emphasis added). The above reference to the ability of the Commission to supersede the existing regulations is merely a recognition that the Act did not freeze existing switched access charges.

The intent to apply a separate set of policies to switched access charges is further demonstrated by Section 251(d)(3), which gives State Commissions exclusive jurisdiction to:

> [E]stablish access and interconnection obligations of local exchange carriers . . ..

Such general authority would be inappropriate if the more restrictive standards of Section 251(c)(3) applied to switched access service.

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[42] NPRM at ¶ 161.

B. Imposing the Act's pricing standards on access charges would lead to unintended results.

The Act allows access charges to be applied based on across-the-board policies. If access charges were subject to company-by-company determination pursuant to Section 251(c)(3), it would result in the piecemeal development of access charges depending in part on where and how local competition occurs. The non-uniform results would be assured by the fact that Section 251(c)(3) only applies to incumbent LECs and does not apply to "rural telephone companies." No plausible reason exists for developing switched access charges in such a haphazard fashion.

C. Section 251(c) does not apply to access charges.

Further, the Commission correctly observes that the purpose of Section 251(c)(3) is to permit a competing LEC to obtain access to "transmission and routing of telephone exchange service and exchange access."[43] Interexchange access does not come within those terms. "Telephone exchange service" is defined in Section 3(47) of the 1934 Act, as amended, as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area . . .." "Exchange access" is defined in section 3(16) of the 1934 Act, as amended as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."

As the Commission noted, Section 251(c)(3) allows a competing LEC to purchase the rate elements necessary to "offer" switched access as a competing LEC to

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[43] NPRM at ¶ ¶ 160, 161.

interexchange carriers.[44] It does not allow an interexchange carrier to circumvent paying switched access rates.

A simplified way of expressing this principle is that Section 251(c)(3) applies where a telecommunications carrier seeks interconnection in order to provide local access services to other customers. It does not apply where the carrier is the customer. Where the carrier is the customer, it should purchase service in the same manner as other customers, based on tariffed rates.

Nor should an interexchange carrier be allowed to circumvent the payment of access charges by creating an affiliate company which exists for the purpose of providing indirectly that which an interexchange carrier cannot provide directly.[45] Such a practice would be a clearly inappropriate use of the unbundling provisions of the Act..

As the Commission noted, the interconnection rights of telecommunications carriers are merely one component of the overall changes being studied by the Commission.[46] It would be highly inappropriate to allow in this Docket the establishment of interconnection rights which prevented the Commission from establishing a coherent nationwide interstate access charge policy, uniformly applicable to all interexchange carriers. It would also be highly inappropriate to allow the piecemeal circumvention of the universal service support mechanisms contained in those access charges. Such a result would be directly contrary to Section 254(b) of the Act, which requires that the Commission's base policies preserve and advance universal service for

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[44] NPRM at 161.
[45] NPRM at ¶ 162.
[46] NPRM at ¶ 3.

rural and high cost areas, assuring reasonably comparable services at reasonably comparable rates.

Therefore, the Commission should determine that Section 251(c)(3) does not apply to switched access services offered by an incumbent LEC to interexchange carriers.

VII. BILL AND KEEP SHOULD NOT BE PERMITTED WHERE IT PROVIDES A CARRIER WITH A COMPETITIVE ADVANTAGE.

A. A bill and keep approach is appropriate only under limited circumstances.

The Commission also seeks comments on the proper role for bill and keep compensation arrangements.[47] The Act requires reciprocal compensation arrangements "by each carrier of costs" determined "on the basis of a reasonable approximation of the additional costs of terminating such calls."[48] The intent is to prevent telecommunication carriers from obtaining an unfair economic advantage by avoiding the full cost of service. There are, however, circumstances where a bill and keep arrangement would be a fair and economical approach. Specifically, bill and keep arrangements should be authorized where the parties voluntarily agree to such an approach or, in the absence of an agreement, where either of the two conditions exist:

> 1) the transport and termination costs of both carriers are roughly symmetrical and traffic is roughly balanced in each direction during peak periods; or (2) actual transport and termination costs are so low that there is little difference between a cost-based rate and a zero rate (for example, during off-peak periods).[49]

These limitations conform with the purposes of the Act.

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[47] NPRM at 243.
[48] Section 252(d)(2).
[49] NPRM at ¶ 243.

B. Section 251(d)(2) establishes reciprocal compensation standards.

Section 251(b)(5) establishes a duty for all LECs to establish reciprocal compensation arrangements. Section 252(d)(2) provides in relevant part:

> [A] State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--
>
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

This provision clearly requires reciprocal compensation to be based on a reasonable approximation of the actual additional cost of transporting and terminating each carrier's traffic. This language necessarily precludes the use of bill and keep except in those instances where the net additional cost closely approximates the results obtained through a bill and keep mechanism.

C. Bill and keep should not violate Section 251(d)(2) pricing standards.

Bill and keep arrangements are expressly authorized by the Act in Section 252(d)(2)(B) which reads in part:

> RULES OF CONSTRUCTION.-This paragraph shall not be construed-
>
> "(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements);

While the Act allows bill and keep as an arrangement to "waive" mutual recovery, this exception does not allow the Commission or a State commission to compel a result that is fundamentally inconsistent with the pricing requirements of subsection 252(d)(2)(A).

Rather, the Act allows bill and keep to be used where both parties voluntarily accept the methodology. Section 252(a) allows voluntary agreements to deviate from the requirements of Section 251 b), which includes the obligation for reciprocal compensation. Bill and keep would also be allowed where the requirements noted by the Commission, above, are present.[50]

Therefore, in the absence of a voluntary agreement, bill and keep should not be mandated as the method for providing reciprocal compensation unless it would reasonably approximate the additional cost associated with transporting and terminating each carrier's traffic.

VII. CONCLUSION.

The Minnesota Independent Coalition respectfully submits these comment recommending that the Commission:

1. Refrain from adopting "National Rules" that would be completely inappropriate if applied to rural telephone companies.

2. Allow the States to resolve all issues regarding exemptions, suspensions or modifications of incumbent LEC obligations for LECs that qualify under the Act.

3. Allow the States to impose additional obligation on new competitors, particularly in areas served by rural telephone companies.

4. Determine that Section 251(c) does not apply to non-competing, existing interconnection arrangements between LECs.

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[50] Id.

5. Price unbundled elements at or above the costs, even if the total exceeds the price of the bundled service.

6. Not allow interexchange carriers to circumvent access charges.

7. Limit the use of bill and keep to the circumstances contemplated in the Act.

Respectfully submitted,

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